UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

OAKLAND HILLS COUNTRY CLUB

Employer

and **CASE 7-RD-3449**

W. PATRICK WHITTAKER, **An Individual**

Petitioner

and

LOCAL 24, HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Union

APPEARANCES:

Thomas W.H. Barlow, Esq. And Holly C. Beatty, Esq. of Troy, Michigan for the Employer.
W. Patrick Whittaker, of Redford Michigan, pro se.
Duane F. Ice, Esq. of Royal Oak, Michigan for the Union.

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding[1], the undersigned finds:

[1] The Employer and the Union filed briefs, which were carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Overview

The Petitioner seeks a decertification election in a unit of about 75 full-time and regular part-time sous chefs, extra sous chefs, pastry chefs, extra pastry chefs, assistant pastry chef, extra assistant pastry chefs, rounds cooks, extra rounds cooks, utility stewards, extra utility stewards, waitstaff/servers, extra waitstaff/servers, new hire waitstaff/servers, snack bar attendants, extra snack bar attendants, food service assistants, extra food service assistants, bartenders, extra bartenders, housekeepers, extra housekeepers, storeroom clerks, extra storeroom clerks, locker room- head attendant tipped employees, locker room attendant tipped employees, extra locker room attendant tipped employees, valets, extra valets, work leaders, and servers employed by the Employer at its facility located at 3951 West Maple Road, Bloomfield Hills, Michigan; but excluding managerial employees, confidential employees, administrative employees, office clerical employees, and guards and supervisors as defined in the Act. The Union maintains that there is a contract bar to the holding of an election, and that the petition should be dismissed. The Employer and the Petitioner assert that there is no contract bar to an election. For the reasons set forth below, I find that there is a contract bar because the contract extension was effective prior to the filing of the decertification petition. Accordingly, I dismiss the petition.

Negotiations

The Employer operates a private golf and country club in Bloomfield Hills, Michigan. The Employer and the Union have had a collective bargaining relationship for at least 20 years, and had a collective bargaining agreement effective from May 1, 1999 through April 30, 2004. About November 2003, the Employer contacted the Union to discuss extending the collective bargaining agreement for an additional year, through April 30, 2005. The Employer initiated these discussions because it is hosting the Ryder Cup international golf

competition in September 2004, and did not want to be concerned about bargaining in the months adding up to that event.

The parties had one face-to-face bargaining session, in November 2003. At that session and subsequent phone conversations, the parties negotiated a tentative agreement. The Union, by letters dated January 27, 2004, asked its members their position, "yes" or "no", on extending the agreement. The Extension Agreement called for no wage increase, the Employer absorbing all additional health insurance costs, and some adjustment in various Union fund contributions. The members voted to extend the contract.

The Extension Agreement was faxed to the Employer by the Union on March 29. It states that "the parties hereby agree" that the collective bargaining agreement effective until April 30, 2004, will be extended with full force and effect until April 30, 2005, with a few modifications. The modifications involved changes to various Union welfare funds, with all of the modifications effective May 1, 2004. The Employer signed the Extension Agreement on April 1, and mailed it back to the Union on that date.

On April 23, the Union sent the Employer an Addendum to the collective bargaining agreement. The Addendum reads in part, as follows: "This Addendum is made and entered into this 1st day of April 2004…It is mutually agreed to as follows: and whereas Oakland Hills Country Club and the Union desire to amend the 1999-2004 Agreement, be it therefore resolved as follows: 1. The duration of the Agreement will be extended from April 30, 2004, through April 30, 2005." The Addendum then recited the agreements on a wage freeze, health insurance, and union fund contributions. The Employer sent the executed Addendum to the Union on April 27.

On April 27, the Union held an informational meeting at the Employer's facility to explain the Extension Agreement and the Addendum to its members. The members called for a vote on the Extension Agreement, and the majority of members present approved the one-year extension of the collective bargaining agreement. The Union then signed the Extension Agreement and Addendum on that date and faxed them to the Employer's attention the next day.

On April 29, the Petitioner filed the instant petition.

Analysis

In determining whether there is a valid contract, the Board examines whether the contract is written, contains substantial terms and conditions, and is signed by all parties. ***Appalachian Shale Products Co.***, 121 NLRB 1160 (1958);

Georgia Purchasing, Inc., 230 NLRB 1174 (1977). All parties agree there is a valid contract. The Extension Agreement and Addendum are in writing. They clearly refer to an existing written collective bargaining agreement, and note particular Articles and Sections of this agreement and explain the agreed-upon items and changes. The agreed-upon items concern substantial and important terms and conditions of employment, including wages, insurance, and union pension and welfare fund contributions. The Extension Agreement and Addendum were signed by both the Employer and the Union by April 27, 2004. Accordingly, there is a valid contract.

The Union contends that there is a contract bar that prevents the processing of the instant petition. The Board's contract-bar doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. ***Direct Press Modern Litho, Inc.,*** 328 NLRB 860 (1999), citing ***Appalachian Shale Products Co.,*** supra. The doctrine is Board created, not imposed by the Act or judicial caselaw, and the Board has considerable discretion to formulate and apply its rules. ***Bob's Big Boy Family Restaurants v. NLRB***, 625 F.2d 850, 851, 853-4 (9th Cir. 1980).

A contract having a fixed term of more than three years operates as a bar for as much of its term as does not exceed three years. ***General Cable Corp.***, 139 NLRB 1123 (1962). When, after the end of the first three years of a long-term contract, and before the filing of a petition, the parties execute a new agreement which embodies new terms and conditions, or incorporate by reference the terms and conditions of the long-term contract or a written amendment which expressly reaffirms the long-term agreement and indicates a clear intent on the part of the contracting parties to be bound for a specific period, the new agreement or amendment is effective as a bar for as much of its term as does not exceed three years. ***Santa Fe Transportation Co.***, 139 NLRB 1513, 1514 fn. 2 (1962), citing ***Southwestern Portland Cement Co.***, 126 NLRB 931 (1960).

Here, the parties negotiated a new agreement, to be effective through April 30, 2005, a period less than three years. There is no indication on the face of the Extension Agreement or the Addendum that they took effect at any time other than at the time of execution, April 27. Indeed, the documents use present tense terms such as "the parties hereby agree", "This Addendum is made and entered into this 1st day of April 2004", "It is mutually agreed". In contrast, the 1999-2004 agreement specifically set forth in both its first sentence and in Article 22 that the agreement was effective on May 1, 1999, despite its signing by both parties on June 29, 2000. Accordingly, the April 27 Extension Agreement and Addendum to the collective bargaining agreement serve as a bar to the decertification petition filed on April 29, and no question concerning representation exists.

In brief, the Employer argues that because of an asserted variance in possible effective dates, April 1st as set forth in the Addendum, the April 27th execution date, and the May 1st effective date for certain changes in benefits, Petitioner was unable to determine the proper time to file the petition and a contract bar should not be found. That argument is without merit. Unit employees, including Petitioner, had ample opportunity to file a petition. In addition to the 60 to 90 day "open period" prior to April 1, 2002, the employees had almost two years, beginning April 30, 2002, to exercise their free choice and change their bargaining representative without the threat of a contract bar. Instead, the Petitioner filed the instant petition on April 29, two days after the Union and the Employer had finalized the one-year Extension Agreement. Thus, the policies of the Act are best served by finding that the unit employees had ample opportunity to exercise their free choice to change their bargaining representative, and that the balance should shift to consideration of stability in labor relations.

ORDER

IT IS ORDERED that the petition is dismissed.[2]

Dated at Detroit, Michigan, this 3rd day of June 2004.

"/s/[Stephen M. Glasser]."

(SEAL) /s/ Stephen M. Glasser

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[2] Under the provisions of Section 102.67 the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **June 17, 2004**.